

ESTTA Tracking number: **ESTTA451283**

Filing date: **01/13/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Syneron Canada Corporation
Granted to Date of previous extension	02/12/2012
Address	28 Fulton Way, Unit #8 Richmond Hill, Ontario, L4B1J5 CANADA
Domestic Representative	Sylvia Mulholland Law Office of Sylvia Mulholland 5405 Wilshire Blvd. Suite #220 Los Angeles, CA 90036 UNITED STATES smulholland@mulholland-law.com Phone:323 330-9520

Applicant Information

Application No	85242952	Publication date	08/16/2011
Opposition Filing Date	01/13/2012	Opposition Period Ends	02/12/2012
Applicant	Eagle Hospital Physicians, LLC Suite 350 5901-C Peachtree Dunwoody Road Atlanta, GA 30328 UNITED STATES		

Goods/Services Affected by Opposition


Class 035. All goods and services in the class are opposed, namely: hospital management; business management of physician practices; business management of managed care organizations; business management of patient care
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3192452	Application Date	11/13/2005
Registration Date	01/02/2007	Foreign Priority Date	NONE
Word Mark	ELOS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 010. First use: First Use: 2003/10/09 First Use In Commerce: 2003/10/09 Medical aesthetic devices used for skin treatment and hair removal, using lasers, radio-frequency, electrical energy and other types of light

U.S. Application No.	77850006	Application Date	10/15/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ME MY ELOS		
Design Mark			
Description of Mark	The mark consists of the stylized wording "me" having a line over the letter "e". Below is the stylized wording "my elos" having a line over the letter "e" in a smaller cursive font.		
Goods/Services	Class 010. First use: Medical aesthetic devices used for skin treatment and hair removal, using radio frequency, electrical energy, intense pulsed light, and other types of light		

Attachments	78752821#TMSN.jpeg (1 page)(bytes) 77850006#TMSN.jpeg (1 page)(bytes) ELOS Opposition.pdf (9 pages)(2575543 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Sylvia Mulholland/
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Name	Sylvia Mulholland
Date	01/13/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re the Matter of:

Syneron Canada Corporation
Opposer

vs.

Eagle Hospital Physicians, LLC
Applicant

Mark: ELOS

Serial No.: 85/242952

Filed: February 15, 2011

Published: August 16, 2011

Opposition No. _____

NOTICE OF OPPOSITION

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

Syneron Canada Corporation, a Canadian corporation, located and doing business at 28 Fulton Way, Unit #8, Richmond Hill, Ontario, L4B 1J5 Canada and through its parent company, Syneron Medical Ltd. of Israel ("Syneron") believes that it will be damaged by the registration by Eagle Hospital Physicians, LLC ("Applicant" or "Eagle") of the mark ELOS shown in its Application Serial No. 85/242952 and hereby opposes the same in accordance with 15 U.S.C. §1063.

As grounds for its opposition, Opposer alleges:

1. Eagle filed a trademark application assigned Application Serial No. 85/242952 in the United States Patent and Trademark Office ("USPTO") on

February 15, 2011 (“the Application”) to register the mark ELOS (the “Applicant’s Mark”) on the basis of intention to use, in connection with “hospital management; business management of physician practices; business management of managed care organizations; business management of patient care” in International Class 35 (the “Applicant’s Services”).

2. Applicant’s Mark was published for Opposition in the *Official Gazette* on August 16, 2011.
3. On August 30, 2012, Opposer requested, and was granted, a 90-day extension of time in which to oppose Applicant’s Mark, until December 14, 2011.
4. On December 12, 2011 Opposer requested, and was granted, an additional 60-day extension of time, on consent. Applicant had in fact only consented to a 30-day extension, until January 14, 2012. Opposer admitted its mistake and offered to correct same, but as the parties were engaged in settlement discussions, the parties agreed, via their respective counsel, to adhere to the extension of 30 days only, to which Applicant agreed, being January 14, 2012. Accordingly, this Notice of Opposition is timely filed.
5. The Opposer and its parent company, Syneron, are well-known, global manufacturers and providers of medical aesthetic devices that use a wide variety of energies, including the signature ELOS technology, that effectively treats a variety of dermatological conditions.
6. Products of Opposer and Syneron are sold to dermatologists, plastic surgeons, family practitioners and other physicians, aestheticians, and medical spa professionals around the world.

7. Opposer and Syneron provide information about their technology and devices, including the ELOS technology and ELOS branded products, on websites such as www.syneron.com and www.memyelos.com. Opposer and Syneron also provide webinars to physicians under the common law mark ELOS WEBINARS. Websites of many third parties also include information about Opposer's and Syneron's ELOS technology and ELOS branded products.
8. Opposer is the owner of U.S. Registration No. 3192452 for the mark ELOS (the "Opposer's Registered Mark"), which was filed based on actual use in commerce since October 9, 2003, for "Medical aesthetic devices used for skin treatment and hair removal, using lasers, radio-frequency, electrical energy and other types of light" ("Opposer's Goods") in International Class 10. One copy of the USPTO record showing the current active status of Opposer's Registered Mark is attached as Exhibit A.
9. Opposer is the owner of the application before the USPTO for the mark ME MY ELOS Design, Application No. 77/850006, filed on an intention to use basis, on October 15, 2009 for "Medical aesthetic devices used for skin treatment and hair removal, using radio frequency, electrical energy, intense pulsed light, and other types of light" in International Class 10 (the Opposer's Application"). One copy of the USPTO record showing the current active status of the Opposer's Application is attached as Exhibit B.
10. "ELOS" is the identifier, trade name and stock symbol assigned to Syneron Medical Ltd., and thereby including its wholly-owned subsidiary, the Opposer, on the NASDAQ stock exchange, and "ELOS" has been so used since 2004.

11. Neither Opposer, nor its parent Syneron, is connected in any way with Applicant or Applicant's use of Applicant's Mark.
12. Applicant's use of Applicant's Mark is without Opposer's consent or permission.
13. Opposer's Registered Mark is valid and distinctive as used in connection with Opposer's Goods marketed to the medical profession, and Opposer's Registered Mark is currently in use in commerce with Opposer's Goods.
14. Applicant's Mark ELOS is identical or nearly identical in sound, meaning and appearance to Opposer's Registered Mark, and its trade name and NASDAQ identifier, and is confusingly similar to Opposer's Application for ME MY ELOS which wholly contains Applicant's Mark.
15. Applicant's Services travel, or will travel, in the same or similar channels of trade and are viewed, or will be viewed, by the same customers, namely physicians and others in the medical profession, as are Opposer's Goods. Applicant's Services are therefore substantially similar to Opposer's Goods with which Opposer's Registered Mark is used.
16. The use or intended use of Applicant's Mark so resembles Opposer's Registered Mark, its Application and its common law marks and trade name ELOS as to be likely, when used in conjunction with Applicant's Services which are designed for and marketed specifically to the medical profession, to cause confusion, or to cause mistake, or to deceive, as provided in 15 U.S.C. §1052 (d).
17. The registration of Applicant's Mark on the Principal Register in connection with the Applicant's Services would be inconsistent with Opposer's rights and is

contrary to the provisions of Section 2 of the Lanham Act, and Opposer believes that it would be damaged thereby.

18. WHEREFORE, Opposer respectfully prays that Application Serial No. 85/242952 be rejected, that no registration be issued thereon, and that this opposition be sustained in favor of Opposer.

The required opposition fee of \$300 accompanies this Notice.

Dated: January 13, 2012.

Respectfully submitted,

BY: 

Sylvia Mulholland
5405 Wilshire Blvd.
Suite # 220
Los Angeles, California, 90036
Tel: (323) 330-9520
Facsimile: (323) 330-9506
Attorney for Opposer
Syneron Canada Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 2012, a true and correct copy of the above and foregoing NOTICE OF OPPOSITION was sent via first class mail delivery to:

William H. Brewster
Kilpatrick Townsend & Stockton, LLP
1100 Peachtree St., NE
Suite 2800
Atlanta, GA 30309-4528


Sylvia Mulholland

EXHIBIT A



United States Patent and Trademark Office

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elōs

Word Mark	ELOS
Goods and Services	IC 010. US 026 039 044. G & S: Medical aesthetic devices used for skin treatment and hair removal, using lasers, radio-frequency, electrical energy and other types of light. FIRST USE: 20031009. FIRST USE IN COMMERCE: 20031009
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78752821
Filing Date	November 13, 2005
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	October 17, 2006
Registration Number	3192452
Registration Date	January 2, 2007
Owner	(REGISTRANT) Syneron Canada Corporation CORPORATION CANADA Unit 110 111 Granton Drive Richmond Hill, Ontario CANADA L4B 1L5
Attorney of Record	Sylvia Mulholland
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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EXHIBIT B



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Word Mark ME MY ELOS
Translations The wording "me" and "elos" in the mark has no meaning in a foreign language.
Goods and Services IC 010. US 026 039 044. G & S: Medical aesthetic devices used for skin treatment and hair removal, using radio frequency, electrical energy, intense pulsed light, and other types of light
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 24.17.14 - Ampersands (&); At symbol (@); Brackets, punctuation; Commas; Diacritical marks; Exclamation points (!); Punctuation marks; Question marks (?)
Serial Number 77850006
Filing Date October 15, 2009
Current Filing Basis 1B
Original Filing Basis 1B
Published for Opposition May 18, 2010
Owner (APPLICANT) Syneron Canada Corporation CORPORATION CANADA Unit 110 111 Granton Drive Richmond Hill, Ontario CANADA L4B1L5
Attorney of Record Jennifer Lee Taylor
Prior Registrations 3192452;3196268
Description of Mark Color is not claimed as a feature of the mark. The mark consists of the stylized wording "me" having a line over the letter "e". Below is the stylized wording "my elos" having a line over the letter "e" in a smaller cursive font.
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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